that customer approval is not necessary to protect consumers of information services.[78] That does not address the advantages that ILECs will derive in offering packages of telecommunications and information services in competition with CLECs and other entities. The impact on local competition was not a realistic consideration when the Computer III rules were issued. Thus, such use of CPNI will have a negative competitive impact beyond the information service market.

For the same reason, forbearance would not be in the public interest. Although it would reduce carriers' costs to be able to use CPNI without customer approval to market information services, ILECs would benefit disproportionately on account of their monopoly-derived CPNI databases. Such an exploitation of a monopoly advantage in a competitive market would not be in the public interest. Bell Atlantic again raises the opt-out approval that has been allowed for the use of CPNI by BOCs to market information services under Computer III and argues that the unapproved use of CPNI by all carriers to market information services would continue to be in the public interest.[79] As explained above, however, the negative competitive effects of such unapproved use of CPNI go beyond the information services market and require a finding that forbearance would not be in the public interest. Forbearance as to the unapproved use of CPNI to market information services outside the CMRS context should

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[78] Bell Atlantic Pet. at 14.

[79] Id. at 15-16.

therefore be denied.

IV. PREVIOUS CUSTOMER APPROVALS NOT OBTAINED IN CONFORMANCE WITH THE CURRENT NOTIFICATION AND APPROVAL SOLICITATION RULES SHOULD NOT BE "GRANDFATHERED"

AT&T states that it has expended $70 million in securing customer approvals from millions of its customers under Section 222(c)(1). It explains that without guidance from the Commission prior to release of the *Order*, it attempted to apply Section 222(c)(1) in good faith in seeking oral approval from customers, using a script that varied over a two year period. AT&T concedes that the script did not comply with the notification and approval procedure subsequently prescribed in the *Order* but asserts that the millions of customers who refused to give approval demonstrate that the script was understandable and that, in the case of the approvals that were given, consent was informed. In the case of its wireless customers, however, no affirmative approvals were sought or obtained. Rather, "opt-out" "approval" was obtained using billing inserts notifying customers that they were presumed to have approved AT&T's use of CPNI unless they notified AT&T's Wireless Services in writing.

AT&T requests that the Commission permit these approvals to remain in effect. It argues that to resolicit millions of approvals using the notification and approval procedures prescribed in the *Order* will be not only needlessly expensive but also annoying to customers. It offers to send all of the customers who previously gave their approvals a written notification of their CPNI rights along with an explanation that they have the right to withdraw their approvals.[80]

It is crucial for the future development of competition that the Commission reject AT&T's plea for absolution. Its various scripts, attached to its Petition, were wholly inadequate to give customers a sense of their CPNI rights, as the Order requires. Thus, they failed to: state that the customer has a right, and that AT&T has a duty, to protect the confidentiality of CPNI; specify the types of information that constitute CPNI and the entities that will receive the CPNI; describe the purposes for which the CPNI will be used; inform the customer of his or her right to disapprove those uses and to deny or withdraw access to CPNI at any time; advise customers of the precise steps they must take in order to grant or deny access to CPNI or clearly state that a denial of approval will not affect the provision of any services to which the customer subscribes.[81]

These are not mere technicalities; as the Order points out, a full notification of rights is an element of informed approval under Section 222(c)(1). Such a requirement is necessary to implement Congress' intent to safeguard the confidentiality of sensitive information and to vest control over such information with the customer.[82] Accordingly, none of AT&T's customers has actually given a knowing, informed approval to use or disclose

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[80] AT&T Pet. at 18-22.

[81] Order at ¶ 138.

[82] Order at ¶¶ 127-28.

CPNI within the meaning of Section 222(c)(1). The "opt-out" approvals assumed for AT&T's wireless customers, of course, are beyond the pale, since, for those customers, there was not even the appearance of an affirmative approval. Moreover, approvals obtained in the absence of prior notification cannot be salvaged by a "retroactive" notification after-the-fact.[83]

That AT&T may have been acting in subjective good faith is irrelevant. Even if its scripts reflected a reasonable interpretation of the customer approval clause of Section 222(c)(1), which MCI does not concede, that provides no reason to endorse them after-the-fact. Under Chevron, if the Commission's interpretation of the customer approval clause is reasonable, and AT&T does not dispute that it is, the Commission's interpretation governs and applied as of the passage of the 1996 Act.[84]

Aside from the multiple substantive defects in the scripts, AT&T's grandfathering proposal must be rejected because of the harm it would cause to competition. It would be unconscionable to give AT&T a free pass at the outset, while all other carriers must provide the full notification and approval required by the Order. It is impossible to predict how many of AT&T's customers would have given their approvals under the proper procedures, but it is highly unlikely that nearly as many would have done so. Thus, if other carriers now try to obtain approvals in the proper manner, they will be laboring under a significant handicap, on

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[83] Id. at ¶ 141.

[84] See Chevron, U.S.A. v. NRDC, 467 U.S. 837 (1984).

top of the advantage AT&T already has as the largest carrier in the nation with the most CPNI at its disposal. AT&T should therefore be required to start over and obtain customer approvals in the proper manner. Whatever confusion or annoyance that may cause its customers is its own doing and provides no excuse for noncompliance with Section 222(c)(1).

V. REQUESTS TO ELIMINATE THE SAFEGUARDS OTHER THAN THE "AUDIT TRAIL" REQUIREMENT SHOULD BE REJECTED

MCI and other parties have petitioned for reconsideration of the CPNI database "audit trail" requirement because of its unnecessary burdensomeness. A number of parties, however, have also sought reconsideration and/or forbearance from the application of some or all of the other compliance safeguards in Part VIII(D) of the Order as well, such as the CPNI approval status "flagging" requirement and the personnel training requirement. Some parties request such relief for all carriers, while others request it only for small or rural carriers.

USTA seeks the most sweeping relief -- elimination of all the safeguards as to all carriers. USTA argues that the Commission has not demonstrated sufficient benefits from the safeguards to justify the tremendous costs and other burdens and that the safeguards inappropriately assume probable violations of the CPNI rules in the absence of such burdensome compliance mechanisms.[85] Bell Atlantic and other parties request that the

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[85] USTA Pet. at 9-15.

flagging and audit trail requirements be eliminated for all carriers and that carriers decide how best to demonstrate compliance with the CPNI rules.[86]

CompTel, TDS and LCI focus on carriers that have not previously been subject to any CPNI rules. They argue that there was an insufficient notice and record in this proceeding on which to base the flagging and audit trail requirements, especially as to the costs of such computer system upgrades for carriers never before subject to any CPNI requirements. They also point out that these safeguards were adopted primarily on a record consisting largely of ex parte submissions by larger carriers.[87] LCI requests that carriers be given at least 18 months to implement these safeguards.[88]

Other parties seek relief only for small and rural or other categories of carriers. ALLTEL and the Independent Alliance request that the flagging and audit trail requirements be eliminated for small and rural LECs, and, in the case of ALLTEL's Petition, for wireless providers as well.[89] TDS would add the rest of the safeguards to the list to be eliminated for small and midsized carriers.[90] NTCA requests forbearance from the application of the audit trail and flagging requirements for

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86 Bell Atlantic Pet. at 22-23.

87 CompTel Pet. at 21-23; LCI Pet. at 2-6; TDS Pet. at 12.

88 LCI Pet. at 6.

89 See, e.g., ALLTEL Pet. at 8-9.

90 TDS Pet. at 11-16.

rural LECs.[91]

The Alliance and TDS claim that these requirements will be too expensive and burdensome for small and rural LECs. The Alliance argues that in smaller entities, such as small and rural LECs, there is less reliance on database protections to protect customer information and that the other safeguards, such as personnel training, will be sufficient to ensure compliance by small and rural LECs. The Alliance adds that they are generally too small to realize any efficiencies from computerized mechanisms.[92] Similarly, NTCA argues that the flagging and audit trail requirements will be too expensive for its rural members and states that a survey found that only 73% of its members with less than 1,000 lines have mechanized customer service records.[93]

The Alliance points out that such carriers have never been subject to the Computer III requirements and thus cannot use systems that are already in place. Because of their small size, they cannot spread the costs of the database safeguards across a large number of access lines. In the alternative, the Alliance and NTCA argue for a blanket exemption or waiver for all small and rural carriers, rather than forcing each of them to go to the expense of applying for individual waivers, as permitted by the Order.[94] AT&T and 360 Communications Company request that the

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[91] NTCA Pet. at 7-11.

[92] Independent Alliance Pet. at 1-5.

[93] NTCA Pet. at 9.

[94] Id. at 11; Independent Alliance at 6-9.

flagging requirement be modified to allow carriers the option of using a centralized customer approval status database instead that any customer service, sales or marketing representative would be required to access before viewing the customer's record.[95]

MCI opposes all such requests, including AT&T's and 360's request to modify the flagging requirement, to the extent they extend beyond the audit trail requirement. The compliance safeguards, other than the audit trail requirement, are quite reasonable and necessary for all carriers. One of the reasons that the audit trail requirement can be relaxed as MCI and other parties have requested is that such a modification will still provide adequate protection in light of the remaining safeguards. BellSouth and Frontier, for example, justify the elimination of the audit trail requirement partly on the basis of the protection to be provided by the other compliance safeguards.[96]

Moreover, none of the carriers seeking relief on this point provides an analysis of the relative burdens and likely benefits of the audit trail requirement compared with the other compliance safeguards. MCI found, in its own review, that the audit trail requirement would impose a vastly disproportionate burden on its operations, relative to all of the other safeguards taken together, and would provide very little additional CPNI protection to that afforded by the other safeguards. Presumably,

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95 See, e.g., AT&T Pet. at 14-15.

96 BellSouth Pet. at 23; Frontier Pet. at 5.

all of the parties that seek safeguards relief only from the audit trail requirement came to the same conclusion. Those parties that seek relief from other safeguards as well should demonstrate that they have performed such an analysis. In the absence of a compelling cost-benefit comparative analysis, the Commission should assume that the elimination or modification of the audit trail requirement would reduce the burden on all carriers to such an extent that the remaining safeguards would not pose an unreasonable burden.

AT&T's and 360's requests to substitute a centralized customer approval database for the flagging requirement would weaken the safeguards significantly. Requiring a customer service or sales representative to stop in the middle of a conversation with a customer to access another database in order to learn whether the customer has approved the use of her CPNI before continuing the conversation and viewing the full customer record presents much more of a noncompliance risk than requiring that the customer record on the representative's screen already show the customer's approval status. It is inevitable that in the former situation, the representative will sometimes neglect to consult the approval database before glancing at the customer's record and will use the information in the record to market service outside the customer's current total service relationship. If, however, the approval status is always seen by the representative anytime he looks at a customer record, before he sees any CPNI, such noncompliance, inadvertent or not, is much less likely to occur. Accordingly, the Commission should not allow carriers to use a centralized customer approval status database in place of the flagging requirement.

NTCA does not explain in any detail why forbearance is appropriate, except to recite the criteria.[97] Given that compliance mechanisms are based on predictive judgments, however, it is difficult to understand how forbearance relief from the compliance safeguards could be granted. The nature of issues such as the ultimate impact of the safeguards on competition and the public interest make it impossible to conclude that such safeguards are "not necessary" to ensure reasonable charges or the protection of consumers, as required by Section 10(a). Thus, forbearance cannot be granted. Moreover, NTCA has made no attempt to demonstrate that forbearance from the application of the other safeguards would be appropriate if the audit trail requirement were to be modified in the manner proposed by MCI.

VI. OTHER PROPOSALS THAT WOULD WEAKEN THE CPNI REQUIREMENTS SHOULD BE REJECTED

A. There Should Not be a Wholesale Abandonment of the CPNI Rules for CMRS Providers

Although MCI does not oppose an application of the service definitions that would allow CMRS providers to use CPNI without customer approval to market CPE and information services, MCI opposes the suggestions of other parties that would essentially remove the CPNI rules from CMRS providers. As an alternative to

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[97] NTCA Pet. at 7-11.

its request to allow CMRS providers to use CPNI without customer approval to market CPE and information services, Bell Atlantic proposes that the Commission "forbear from applying the CPNI rules to wireless services and equipment altogether."[98] Bell Atlantic offers no justification for such an expansive exemption for CMRS providers, and it apparently intends by such language only to remove any obstacles to CPE and information services marketing by CMRS providers. Limited to that intent, MCI has no objection, but there is no justification in the record for any broader exemption or relaxation of the CPNI rules for CMRS providers.

One other example of such an approach is Omnipoint's request that CMRS providers be allowed to use "opt-out" approval under Section 222(c)(1). Omnipoint claims that in a competitive market such as CMRS, opt-out approval is pro-competitive, since large incumbents will typically be providing a wider range of services and thus will have more CPNI that can be used without customer approval than smaller new entrants. Moreover, according to Omnipoint, smaller entrants will be less likely to have the resources to compile a customer approval list. Omnipoint also raises the specter of more indiscriminate, intrusive marketing as a result of increased attempts to secure customer approvals.[99]

All of these issues were thoroughly explored in the Order in rejecting opt-out approval for all carriers. The CMRS market

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[98] Bell Atlantic Pet. at 20.

[99] Omnipoint Pet. at 16-17.

does not present any better case for opt-out, and Omnipoint's request should be denied. Omnipoint has the competitive goals of Section 222 backwards. The competitive purpose of Section 222 is to ensure that a carrier with a large CPNI database cannot exploit it unfairly in breaking into a new market. Opt-out approval would essentially remove any CPNI restrictions, thereby favoring large carriers with greater CPNI resources in the struggle over new markets. Moreover, carriers are not likely to solicit approvals from their customers so intrusively that they drive them away. Natural competitive incentives will regulate the approval solicitation process and keep it in bounds.

One other proposal that would inappropriately relieve CMRS providers from the ordinary CPNI obligations of other carriers was submitted by Vanguard Cellular Systems. Vanguard requests that because CMRS providers use independent marketing agents to such a great extent, and because so many of those agents market for more than one service provider, the Commission clarify that carriers' agents that are not carriers themselves should not be subject to the CPNI rules.[100]

It is not clear whether Vanguard seeks such relief for all carriers or just CMRS providers, but, in either case, its request should be denied. Carriers are always responsible for the actions of their agents, and the CPNI rules should offer no exception. If a carrier shares CPNI with an agent, the carrier is bound by Section 222(a) and (c) to take all steps necessary to

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[100] Vanguard Pet. at 18-19.

ensure that the agent does not misuse the CPNI. That the agent might not be a carrier and thus is outside the Commission's jurisdiction is all the more reason to impose full responsibility for the agent's actions on the carrier.

B. Section 222(d)(3) Does Not Authorize Implied Approval

Some parties request that the Commission clarify that the approval procedure that is necessary for marketing on an inbound call under Section 222(d)(3) is substantially simpler and shorter than the notification and approval procedures required for approval under Section 222(c)(1). MCI agrees with those parties but opposes TDS' request that Section 222(d)(3) approval be inferred from the call unless the customer indicates otherwise.[101] That would go too far. The customer is never going to disapprove CPNI use on an inbound call unless she is asked about it by the customer service representative. Without any request for approval by the representative, the customer will have no hint that she has the right to control CPNI use. Thus, there is no basis to infer consent merely from a customer's call.

C. The CPNI Rules Should Not be Deferred Pending Reconsideration

ALLTEL requests that the *Order* be stayed or deferred pending reconsideration. It maintains that since Section 222 is self-executing, deferral of the *Order* would simply maintain the status

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[101] *See* TDS Pet. at 11.

quo. Because of the uncertainty as to so many of the CPNI rules promulgated in the Order, ALLTEL argues that deferral would provide a level playing field and would enable all carriers to operate under a clear set of rules. ALLTEL is especially adamant that the eight-month period allowed for implementation of the safeguards is extremely insufficient, especially for smaller carriers.[102]

MCI opposes an unlimited deferral or a stay of the CPNI rules pending reconsideration. It is important for all carriers to begin complying with the CPNI rules as they stand now and to begin implementing the safeguards. Although there is some uncertainty as to the ultimate design of the rules and the safeguards, there is enough of a CPNI regime that is relatively clear and uncontested to enable carriers to take steps to comply. MCI is certainly doing so and expects other carriers to do so. Rather than a deferral of the rules pending reconsideration, MCI requests instead that the Commission expedite review of the reconsideration petitions in order to have final rules in place as soon as possible.

If, however, deferral or stay is granted, MCI requests that such deferral or stay terminate prior to any order granting a BOC authority under Section 271 of the Act to begin providing in-region long distance service in any state. Once any BOC receives in-region authority, there must be fully effective CPNI rules in place in order to avoid undermining the main competitive goals of

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[102] ALLTEL Pet. at 2-5.

Section 222. BOC entry into in-region long distance service would require that BOC use of local service CPNI be subject to CPNI rules in order to prevent the BOC from unfairly exploiting its local service CPNI advantage. Thus, it would be necessary to terminate any stay or deferral of the CPNI rules to prevent greater harm than would be caused by requiring compliance with rules that are still subject to reconsideration.

CONCLUSION

For the reasons stated herein, the petitions for reconsideration discussed above should be denied to the extent indicated.

Respectfully Submitted,

MCI TELECOMMUNICATIONS CORPORATION

By: Frank W. Krogh

Frank W. Krogh
Mary L. Brown
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-2372

Its Attorneys

Dated: June 25, 1998

EXHIBIT A

MCI News

Elena Lucini
MCI State Public Policy
(914)933-6144 or
(800)644-NEWS
Elena.lucini@mci.com
Pager: 888-872-8252

FOR IMMEDIATE RELEASE

MCI APPLAUDS MICHIGAN PSC RULING FINDING AMERITECH PRACTICES IMPROPER

Background: The Michigan Public Service Commission (PSC) yesterday ruled in favor of an MCI action charging Ameritech with violations of PSC orders for refusing to fulfill confirmed customer requests to switch telephone carriers. The Commission also found that Ameritech acted improperly during "three-way" confirmation calls -- which included the customer, MCI and Ameritech representatives -- by pressuring customers to remain with Ameritech and even hanging up or putting the parties on hold for unreasonable periods.

(Please attribute the following statement to Joan Campion, MCI regional executive for public policy.)

Lansing, MI, May 12, 1998 -- "MCI is pleased that the Michigan Public Service Commission sided with consumers by finding that Ameritech violated a PSC order by refusing to fulfill customers' requests to switch their local toll service from Ameritech to MCI -- even though those customers had expressly stated their desire to change phone carriers.

"We also believe the Commission made the right decision by deciding that Ameritech acted improperly when its representatives purposely made the confirmation process difficult for customers wishing to switch to MCI. Those representatives repeatedly tried to unfairly retain customers during calls that were meant solely to confirm a customer's desire to change carriers.

"While the ruling crystalizes the PSC's position that such anticompetitive acts will not be tolerated, MCI was disappointed that the Commission stopped short of awarding damages for the losses we suffered as a result of Ameritech's unlawful behavior. We believe the failure to impose any such punishment sends the signal that Ameritech can violate the law without paying a price."

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CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, do hereby certify that a true copy of the foregoing Opposition of MCI Telecommunications Corporation to Petitions for Reconsideration was served this 25th day of June, 1998 by hand delivery or first class mail, postage prepaid, upon each of the following parties:

Mark C. Rosenblum
Judy Sello
AT&T
Room 3245I1
295 North Maple Avenue
Basking Ridge, NJ 07920

Brad Mutschelknaus
Steven A. Agustino
Kelley Drye & Warren LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

L. Marie Guillory
Jill Canfield
National Telephone
Cooperative Association
2626 Pennsylvania Avenue, NW
Washington, D.C. 20037

Janice Myles
Common Carrier Bureau
Federal Communications Commission
Room 544
1919 M Street, NW
Washington, D.C. 20554

Cheryl A. Tritt
James A. Casey
Morrison & Foerster, L.L.P.
2000 Pennsylvania Avenue, NW
Washington, D.C. 20006-1888

M. Robert Suitland
A. Kirven Gilbert III
BellSouth Corporation
1155 Peachtree Street
Atlanta, GA 30309-3610

Robert Hoggarth
Personal Communications
Industry Association
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561

Lawrence W. Katz
Bell Atlantic Telephone Companies
1320 N. Courthouse Road
Arlington, VA 22201

R. Michael Senkowski
Michael Yourshaw
Gregory J. Vogt
Wiley, Rein & Fielding
1776 K Street, NW
Washington, D.C. 20006-2304

James J. Halpert
Mark J. O'Connor
Piper & Marbury L.L.P.
1200 19th Street, NW
7th Floor
Washington, D.C. 20036

Margot Smiley Humphrey
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Michael S. Pabin
Ameritech
Room 4H82
2000 West Ameritech
Center Drive
Hoffman Estates, IL 60196-1025

Sylvia Lesse
Philip Macres
Kraskin, Lesse & Cosson, L.L.P.
2120 L Street, N.W.
Suite 520
Washington, D.C. 20037

Jeffrey E. Smith
Comcast Cellular Communications, Inc.
480 E. Swedesford Road
Wayne, PA 19087

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Robert J. Gryzmala
SBC Communications, Inc.
One Bell Center
Room 3532
St. Louis, MO 63101

Leon M. Kestenbaum
Jay C. Keithly
Michael B. Fingerhut
1850 M Street, N.W.
11th Floor
Washington, D.C. 20036

Benjamin H. Dickens, Jr.
Gerard J. Duffy
Susan J. Bahr
Blooston, Mordkofsky Jackson & Dickens
2120 L Street, N.W.
Suite 300
Washington, D.C. 20037

Glen S. Rabin
ALLTEL Corporate Services
655 15th Street, NW
Suite 220
Washington, DC 20005

Frederick M. Joyce
Christine McLaughlin
Joyce & Jacobs, L.L.P.
1019 19th Street, N.W.
14th Floor
Washington, D.C. 20036

William L. Roughton, Jr.
PrimeCo Personal Communications, L.P.
601 13th Street, N.W.
Suite 320 South
Washington, D.C. 20005

Michael J. Shortley, III
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

Robert J. Aamoth
Steven A. Augustino
Kelley Drye & Warren L.L.P.
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036

Lawrence E. Sarjeant
Linda Kent
United States Telephone Association
1401 H Street, NW
Suite 600
Washington, D.C. 20005

Raymond G. Bender, Jr.
J.G. Harrington
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, D.C. 20036

ITS
1919 M Street, NW.
Room 246
Washington, D.C. 20554

Sylvia Chukwuocha

Sylvia Chukwuocha